

**BEFORE THE
COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND
July 24, 1998**

IN THE MATTER OF

**VENUS HARARY
5500 Friendship Blvd., #2203N
Chevy Chase, Maryland 20815
Complainant**

v.

**THE WILLOUGHBY OF CHEVY
CHASE
4515 Willard Avenue
Chevy Chase, Maryland 20815
Respondent**

**Case No. 373-0
September 4, 1998**

DECISION AND ORDER

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(I), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1984, as amended, and the Commission having considered the testimony and other evidence of record, it is therefore this 24 day of July, 1998 found, determined and ordered as follows:

BACKGROUND

On October 3, 1997, the Complainant, Venus Harary, filed a Complaint with the Commission on Common Ownership Communities in which she alleged that the Board of Directors and General Manager for the Condominium known as the Willoughby of Chevy Chase (hereinafter the "Respondent Condominium") unreasonably and improperly imposed a \$600.00 fine upon her for six noise violations which were alleged to have occurred between July 23 and August 31, 1997. The Complainant also alleges that the amount of the fine imposed was unreasonable. Following unsuccessful efforts at resolving the matter through mediation, the dispute was scheduled for a hearing before a panel of the Commission on Common Ownership Communities which was held on April 15, 1998.

FINDINGS OF FACT

Based upon the testimony and evidence of record presented at the hearing on April 15, 1998, the Commission makes the following findings:

1. The Complainant is a homeowner residing at 5500 Friendship Blvd., #2203N, Chevy Chase, Maryland, which is a condominium unit located within the Respondent Condominium.
2. The Complainant is the sole owner and occupant of the aforesaid condominium unit.
3. The Respondent Condominium is a high-rise condominium located in Chevy Chase, Montgomery County, Maryland and is governed by the provisions of the Maryland Condominium Act set forth in Title 11 of the Real Property Article of the Maryland Annotated Code.
4. Article III, Section 19 of the By-Laws for the Respondent Condominium authorizes the Board of Directors to appoint a Covenants Committee to enforce the rules and regulations adopted by the Condominium. The Board appointed such a Committee to, among other things, enforce the noise rules of the Condominium, and said Committee was acting pursuant to this authority at all times relevant to this dispute.
5. On February 28, 1995, the Respondent Condominium adopted a comprehensive set of rules and regulations governing the conduct of members of the Condominium and imposing sanctions for the violation thereof. Said rules and regulations were amended on January 14, 1997 to, among other things, increase the amount of the fine for a violation of said rules and regulations from \$25.00 to \$100.00 per violation. Before said increase was adopted, the Complainant forwarded a letter to the Board dated November 14, 1996 objecting to the increase as "unreasonable"; however, this increase was approved at a regularly scheduled meeting of the Board of Directors over the Complainant's objections.
6. Of relevance to the instant dispute are the provisions of Article 5, Section 2 and Article V, Section 5 of the Rules and Regulations for the Respondent Condominium which state:

ARTICLE V

* * *

Section 2. Uses of Unit. No illegal, improper, or offensive trade or activity may be carried on within the condominium or within any condominium unit situated therein, nor shall anything be done which may become a disturbance or annoyance to the neighborhood or other owners. No nuisances shall be permitted within the condominium project, nor may any use or practice be permitted which is or becomes

an annoyance or which interferes with the peaceful use and possession of other owners. No commercial business or trade may be conducted in the Condominium's common areas or in any unit that is designed for residential use. (Amended 1/14/97)

Section 5. Radios, Televisions, Audio Equipment, and Musical Instruments. Playing radios, televisions, audio equipment, and musical instruments in such a manner as to unreasonably disturb other residents is prohibited. Such sound which is audible in units other than the unit it originates from shall be presumed to be unreasonably disturbing. (Adopted 2/28/95)

7. In her letter of November 14, 1996 the Complainant also requested that Article V, Section 5 be modified to state that it only applies between 10:00 p.m. and 7:00 a.m. during which time no annoyance of any kind should occur. The Board considered Complainant's letter during its meeting on January 14, 1997, but made no modifications to the rule set forth in Article V, Section 5.
8. At the hearing in this matter, Adam Lipton testified that during his tenure as chairman of the Covenant's Committee from March of 1996 until March of 1998, the Committee followed a four step process when enforcing the Condominium's noise rules. First, the noise would be confirmed by an on-site employee of the management company operating the Condominium. Second, a cease and desist letter would be sent to the offending unit owner. Third, if the matter was not resolved after receipt of the cease and desist letter, a member of the Covenant's Committee would attempt to speak with the resident to informally resolve the complaint. Finally, if the matter was still not resolved, it would be referred to the Board of Directors to hold a hearing to determine whether a violation had occurred and the amount of any sanctions to be imposed. These procedures were not memorialized in writing at the time of the noise complaint which generated the instant dispute, however, the Respondent Condominium is presently in the process of formally adopting written rules enforcement procedures which were introduced at the hearing in this matter but had not yet been formally adopted by the Respondent Condominium.
9. Sometime in 1994 the Respondent Condominium received complaints about noise being generated from the Complainant's condominium unit. As a result of the complaints, Adam Lipton, who was then serving on the Board of Directors for Respondent Condominium, met with the Complainant. Following this meeting the noise complaints ceased until the fall of 1996. At that time, the Respondent Condominium received complaints of loud television/radio noise and banging on the floor of Complainant's condominium. Adam Lipton testified that he again spoke with the Complainant about these complaints and

that she advised him that she was banging on her floor to stop her upstairs neighbor from shooting "death rays" into her unit. Mr. Lipton further testified that he had been contacted by the owner of the unit above the Complainant who advised him that he rents the unit and that one of his tenants had left because they were tired of being harassed by the Complainant.

10. After continuing to receive noise complaints regarding the Complainant's unit the Respondent Condominium forwarded a letter to the Complainant on February 26, 1997 advising her that it had reason to believe that she was in violation of Article V, Section 5 of the Rules and Regulations of the Willoughby of Chevy Chase Condominium "by making loud noises, by pounding on walls, and playing your radios and television in such a manner as to unreasonably disturb other residents", and directing her to discontinue the practice of making such noises. In its letter the Respondent Condominium advised the Complainant that remedial action must be taken within ten days from receipt of the letter and that further violations within twelve months of the letter would result in a hearing before the Board of Directors and possible sanctions, including fines of up to \$100.00 per violation.
11. Between July 23 and August 31, 1997, eleven complaints were received by the management company for Respondent Condominium regarding noise coming from the Complainant's unit. These complaints were investigated by staff of the management company, which confirmed six of the noise complaints on July 23, August 19, August 20, August 22, August 23, and August 31, 1997. Sam Iyapo, a staff member for the management company, testified at the hearing in this matter that he personally visited the Complainant's residence on August 19 and 20 after receiving noise complaints from the residents of 2103N, which is the unit directly below the Complainant's. During his visit on August 19, 1997 Mr. Iyapo heard a loud noise coming from the Complainant's radio while he was walking down the hall more than a unit away from her residence. Upon entering her residence she stated that she had no control over her television or her radio. On August 20, 1997 Mr. Iyapo again visited the Complainant's residence, and on that date he heard loud noises from her television and radio as well as banging inside her unit. She again advised him that she had no control over her radio and that she was upset that the building management would not confirm that her radio was being controlled by persons above her unit. During the hearing in this matter, the Complainant acknowledged that her radio and television are occasionally too loud and claimed that they are being controlled by people in the unit above hers. She also acknowledged that she occasionally has to turn her radio up in order to hear it clearly.

12. After receiving a report from the Covenant's Committee alleging violations of Article V, Section 5 of the Rules and Regulations of the Respondent Condominium, the Board of Directors forwarded a letter to the Complainant on August 29, 1997 advising her that a hearing would be conducted by the Board on September 10, 1997 to determine if there is a reasonable basis to conclude that she had violated said rule, and to determine whether to impose a fine for each of the alleged violations. The Complainant appeared at the hearing on September 10, 1997 and was provided ample time to present testimony and evidence in her defense. At the hearing the Board also received testimony from the chairman of the Covenant's Committee, from a resident in the unit located directly below the Complainant who had made a majority of the noise complaints, and from the resident manager for the Condominium. The Board determined that there were six confirmed violations of Article V, Section 2 and of Article V, Section 5 of the Rules and Regulations for Respondent Condominium. The Board then imposed a fine of \$100.00 for each confirmed violation for a total of \$600.00 in fines. Mr. Lipton testified at the hearing in this matter that the Board imposed the maximum allowable fine because it felt that it was necessary to send the Complainant a firm message that her actions were unacceptable and must stop. Mr. Lipton also testified that the fine was imposed reluctantly, but that it was necessary to protect other tenants in the building.
13. In response to questioning from the panel at the time of the Commissions' hearing in this matter, witnesses for the Respondent Condominium testified that the noise coming from the Complainant's residence was loud and disturbing and was not the type of noise which you had to strain to hear. Based on this testimony and the evidence presented at the hearing, the Commission finds that the Complainant violated Article V, Section 2 and Article V, Section 5 of the Rules and Regulations for the Willoughby of Chevy Chase Condominium on each of the six occasions when the noise was confirmed by the on-site staff for the management company operating the Condominium.
14. At the conclusion of the hearing in this matter the Respondent Condominium requested that the Complainant pay the reasonable attorney's fees incurred by it in opposing her Complaint. The attorney for the Respondent Condominium indicated that she had billed the Respondent Condominium for nine hours of legal services at the hourly rate of \$130.00, or a total of \$1,170.00 in connection with opposing the Complaint in this matter. The Commission finds that this was a reasonable fee for the services rendered to the Respondent Condominium in this matter.

CONCLUSIONS OF LAW

Based upon a preponderance of the evidence, including, but not limited to, testimony and documents admitted into evidence, and after a full and fair consideration of the evidence of record, the Commission concludes that:

1. The Respondent Condominium followed the notification procedures set forth in Section 11-113(b)(1) and (2) of the Maryland Condominium Act before imposing the subject \$600.00 fine on the Complainant. In particular, on February 26, 1997 the Respondent Condominium forwarded a cease and desist letter to the Complainant specifying the alleged violation, the action required to abate the violation, and providing her a time period of not less than ten days during which the violation could be abated without further sanctions. When the noise violation continued within twelve months of the demand to cease and desist, the Board properly served the Complainant with a letter dated August 29, 1997 advising her of a hearing to be held by the Board to determine whether the alleged violation occurred, inviting the Complainant to appear at said hearing, and advising her of the proposed sanctions to be imposed.
2. The Respondent Condominium properly conducted a hearing pursuant to the provisions of Section 11-113(b)(3) of the Maryland Condominium Act before imposing a fine on the Complainant. In particular, on September 10, 1997 the Board of Directors for the Respondent Condominium conducted a hearing wherein it provided the Complainant the opportunity to present evidence and present and cross-examine the witnesses who testified that the Complainant had committed separate violations of the noise rule adopted by the Respondent Condominium. Following this hearing the Board found that violations of its noise rules had occurred and imposed the maximum fine of \$100.00 for each of the six noise violations which the Complainant was found to have committed.
3. Having found that the Board properly notified the Complainant of her violations, that it properly conducted a hearing to determine if a violations occurred, and that six separate violations did indeed occur, the Commission also finds that the fine imposed by the Board in the amount of \$100.00 per violation is reasonable and was within the authority of the Board to impose. In reaching this conclusion, the Commission has considered the fact that the Respondent Condominium previously received noise complaints regarding the Complainant in 1994 and earlier in 1997. These complaints apparently ceased after visits by members of the Board of Directors and Covenant's Committee for the Respondent Condominium; however, on each occasion the Complainant resumed the activities which violated the noise rules, resulting in six confirmed violations of the noise rules between July 23 and August 31, 1997. The Board's determination that it was necessary to impose the maximum fine in order to

deter future violations was clearly reasonable under the circumstances.

4. The Commission further finds that the complaint in this matter was filed frivolously, and therefore requires the Complainant to pay the Respondent Condominium the sum of \$500.00 to defray the attorney's fees incurred by the Respondent Condominium in opposing her complaint. This award is issued pursuant to the provisions of Section 10b-13(d) of the Montgomery County Code. In reaching this determination the Commission has considered the fact that the Complainant presented absolutely no facts to support her allegation that the Respondent Condominium unreasonably imposed a \$600.00 fine upon her for noise violations or that its noise regulations were unreasonable. To the contrary, the Complainant admitted that her radios were too loud, which was tantamount to acknowledging a violation of the Respondent's noise regulations. The only evidence presented by the Complainant to rebut the Respondent's finding that she had violated its noise regulations was her testimony that persons above her condominium were using unseen and unproven control devices to control the volume of her radios and television. While the Complainant may indeed believe that such devices exist, she must also understand that without a shred of evidence to prove its existence, the Commission has no alternative but to find that no such device exists. Under these circumstances, there was no substantial basis for her filing this Complaint, which can only be found to have been filed frivolously and in other than good faith. The Commission is reluctant to enter this award, but feels that in a case such as this, where absolutely no evidence has been shown to support the Complainant's allegations, that the Complainant must contribute toward the Respondent's attorney's fees in order to deter such frivolous filings in the future and to defray the expenses incurred by the Respondent Condominium.

ORDER

In view of the foregoing and based on the evidence of record, the Commission orders that the Complainant pay the \$600.00 fine imposed upon her for violating the Respondent Condominium's Rule and Regulations and that the Complainant pay the Respondent Condominium \$500.00 to defray the attorney's fees incurred by it in opposing her Complaint. Said fine and attorney's fees shall be paid by the Complainant with thirty (30) days from the date of this Order.

The foregoing was concurred in by panel members Krampf, Weiss, and Gardner.

Any party aggrieved by the action of this Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

Respectfully submitted,

By: 

David C. Gardner, Panel Chairperson
Commission on Common Ownership Communities